BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: GOOGLE DIGITIAL ADVERTISING ANTITRUST LITIGATION	MDL No. 3010 ORAL ARGUMENT REQUESTED

This Document Relates To:

STATE OF TEXAS, et. al., *Plaintiffs,* -against- GOOGLE LLC, *Defendant.*	No. 1:21-cv-06841 (PKC) (S.D.N.Y.) No. 4:20-cv-957 (SDJ) (E.D. Tex.)

THE PLAINTIFF STATES' REPLY IN FURTHER SUPPORT OF THE STATE PLAINTIFFS' MOTION FOR REMAND TO THE EASTERN DISTRICT OF TEXAS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Page(s)

Statutes

Other Authorities

INTRODUCTION

In case after case, the Supreme Court has ruled that procedural changes, like those contained in the Venue Act, apply to pending cases. Indeed, in *United States v. National City Lines, Inc.*, 337 U.S. 78, 80-82 (1949), the Supreme Court affirmed the transfer of an antitrust case under the newly enacted section 1404—even though the Court had previously held (*in the very same case* heard before section 1404's enactment) that the district court could not transfer the case under the prior rules. Google cannot and does not dispute this unbroken line of binding precedent. Instead, Google is the latest litigant to take "a selective tour through the legislative history" in hopes that this dubious source of statutory construction can overcome the plain text of the Venue Act and decades of Supreme Court precedent. *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). But the text of the Venue Act speaks in the present tense, making crystal clear it applies to ongoing disputes. Any doubt on that score is belied by the fact that Congress legislates against the backdrop of the common law. For that reason, the very history Google relies upon—if it could be used at all—simply confirms that Congress intended the Venue Act to receive the same retroactive application as any other procedural change.

Google also gestures at Plaintiff States' delay as a form of laches or forfeiture but provides no legal authority for the proposition that taking a couple months means that Plaintiff States lose their statutory rights. The motion should be granted, and the case remanded to Texas.

ARGUMENT

I. The Venue Act applies to *Texas v. Google*.

a. The Venue Act expressly applies to pending cases.

The text of the Venue Act requires remand—which is why Google provides no argument from that text. Instead, Google starts by quoting multiple cases saying *just how clear* Congress must

be to end the inquiry at *Landgraf*'s first step. Response at 9. Next, it explains that the Venue Act does not meet that standard. Response at 10-11. Then, in a remarkable non-sequitur, it concludes that the textual silence *is* clear on the opposite side. *Id.* at 12. But the text obviously does not support Google. Rather, the Venue Act reads that "[n]othing in this section *shall apply* to any action in which the United States or a State *is* a complainant arising under the antitrust laws." *See* Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Div. gg, Title III, § 301, 136 Stat. 4459, 5970 (2022) (emphasis added). The present tense "is" means the Venue Act applies to "any action" in which a State *is currently* an antitrust complainant. Here, Plaintiff States *are* complainants against Google. The MDL statute therefore "shall [not] apply" to these states because they *are currently* complainants.

Google knows the words of the Venue Act do not help it. So it instead resorts to the words that Congress did not enact into law, offering up cherry-picked snippets of legislative history. Response at 8-13. To start, Google's use of legislative history is based on a contradiction. Google essentially argues that the legislative history, when considered, proves that the text of the Venue Act unambiguously supports its position. But this reverses the order of things: Courts are supposed to revert to legislative history only *if* there is ambiguity in the text, not to *prove* the lack of ambiguity. *See United States v. Gonzales*, 520 U.S. 1, 6 (1997) ("Given the straightforward statutory command, there is no reason to resort to legislative history."); *Toibb v. Radloff*, 501 U.S. 157, 162 (1991) ("First, this Court has repeated with some frequency: Where, as here, the resolution of a question of federal law turns on a statute and the intention of Congress, we look first to the statutory language and then to the legislative history if the statutory language is unclear.") (internal quotation marks omitted). In any case, the legislative history upon which Google relies does not even support its position. Google argues that prior drafts of the Venue Act said that its changes would "apply to any matter

pending on, or filed on or after, the date of enactment." Response at 11. The deletion of these words, in Google's telling, somehow proves that the Act is not retroactive. Just the opposite is as likely true. The words were deleted because Congress legislates against the backdrop of the common law, *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010), and so Congress therefore knew it did not need to address retroactivity because the Supreme Court's default rule had already done so. All Google's reliance on legislative history has done is reaffirmed the wisdom of recent Supreme Court cases refusing to use murky legislative history as a method of statutory construction. *Argus*, 139 S. Ct. at 2364 ("Even those of us who sometimes consult legislative history will never allow it to be used to muddy the meaning of clear statutory language.") (internal quotation marks omitted); *Milner v. Dep't of Navy*, 562 U.S. 562, 572 (2011) (same); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992) ("In any event, canons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'") (collecting cases).

The text of the Venue Act is clear. And it comports with the normal rule that Congress knew the default of retroactive application for procedural changes. *Edelman v. Lynchburg Coll.*, 535 U.S. 106, 117-18 (2002) ("This background law not only persuades by its regularity over time but points to tacit congressional approval" what with "Congress being presumed to have known of this settled judicial treatment of the [the background law] when it enacted and later amended Title VII."); *North Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995) ("It is not only appropriate but also realistic to

presume that Congress was thoroughly familiar with our precedents and that it expects its enactments to be interpreted in conformity with them.") (cleaned up).

Here, that means proceeding to *Landgraf* step 2.

b. By default, an act applies to pending cases when it affects only secondary conduct.

Turning to step 2 of *Landgraf*, the State Plaintiffs' motion to remand must be granted because the Venue Act affects secondary conduct rather than primary conduct. Whether a new law affects "primary conduct" guides retroactive application of changes in procedural rules. In *Landgraf v. USI Film Products*, the Court held that—because parties have "diminished interests in matters of procedure" and "rules of procedure regulate *secondary* [*conduct*]" as opposed to "*primary conduct*"—"[c]hanges in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity." 511 U.S. 244, 275, 280 (1994). Subsequent cases reaffirmed that rule. *See Zall v. Standard Ins. Co.*, 58 F.4th 284, 292, 296 (7th Cir. 2023); *Blaz v. Belfer*, 368 F.3d 501, 502 (5th Cir. 2004); *Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State, Bureau of Consular Affs.*, 104 F.3d 1349, 1352 (D.C. Cir. 1997).

Venue changes, which are, themselves, paradigmatically procedural, plainly affect only secondary conduct. In *National City Lines, Inc.* (which Google ignores entirely in its response), the Court applied retroactively a statute that permitted the transfer of "any civil action," holding that it applied to antitrust cases. 337 U.S. 78, 80-82 (1949); *see also United States v. Nat'l City Lines*, 80 F. Supp. 734, 738-39 (S.D. Cal. 1948) ("[M]atters of venue and change of venue are, as a rule, mere incidences of procedure. And statutes relating to remedies and procedure operate retrospectively."). Similarly, in *Ex parte Collett* (which Google also ignored entirely), the Court reached the very same conclusion, permitting retroactive application of a statute that permitted *forum non conveniens*

transfers in FELA cases. 337 U.S. 55, 71 (1949). Further cases support the rule that venue changes apply retroactively when those changes do not affect primary conduct. *See Albemarle Corp. v. AstraZeneca UK Ltd.*, 628 F.3d 643, 650 (4th Cir. 2010); *Schoen v. Mountain Producers Corp.*, 170 F.2d 707, 714 (3d Cir. 1948); *Seay v. Kaplan*, 35 F.R.D. 118 (S.D. Iowa 1964); *Hadlich v. Am. Mail Line*, 82 F. Supp. 562, 563 (N.D. Cal. 1949).

Even jurisdictional changes wrought by new laws affect only paradigmatically secondary conduct. The Supreme Court has held that statutes that merely affect jurisdiction "regulate the secondary conduct of litigation and not the underlying primary conduct of the parties"—they "affect only *where* a suit may be brought, not *whether* it may be brought at all." *Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 951 (1997). Precedent again supports the rule that jurisdictional changes apply retroactively when those changes do not affect primary conduct. *See Hallowell v. Commons*, 239 U.S. 506, 508 (1916); *Bruner v. United States*, 343 U.S. 112, 116-17 (1952); *Landgraf*, 511 U.S. at 274.

Time and time again—whether procedure, venue, or jurisdiction—the Supreme Court applies the same rule: legislation that affects only secondary conduct applies retroactively.

c. The Venue Act affects only secondary conduct.

Here, the Venue Act plainly affects only secondary conduct. In *Landgraf*, the Court held that a statute would affect "primary conduct" if it (1) "impair[ed] rights a party possessed when [it] [had] acted," (2) "increase[d] [its] liability for past conduct," or (3) "impose[d] new duties with respect to transactions already completed." 511 U.S. at 280; *see also* Response at 8-9 (adopting this definition). The Venue Act does none of these three things: it merely changes the venue in which the State Plaintiffs' case will be heard (for pretrial purposes). And, try as it might, Google points to no instance where retroactive application of the Venue Act would affect its primary conduct.

Rather than argue that the Venue Act affects primary conduct, Google instead advances straw man arguments. Most notably, Google needlessly calls into question what would come of Judge Castel's many rulings, even though the law is well-settled that those rulings remain law of the case.[1] *See In re Food Lion, Inc., Fair Labor Standards Act Effective Scheduling Litig.*, 73 F.3d 528, 531 (4th Cir. 1996) ("'[I] would be improper to permit a transferor judge to overturn orders of a transferee judge[.]'") (quoting Weigle, S.A., *The Judicial Panel on Multidistrict Litigation, Transferor Courts and Transferee Courts*, 78 F.R.D. 575, 577 (1977)); *Multidistrict Litigation Manual*, § 10.5 David F. Herr (2022) ("The decisions made by the transferee court are considered "'law of the case.'"). But either way, the Venue Act certainly will not "impair rights [Google] possessed when [it] acted, increase [its] liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf*, 511 U.S. at 280.

Every case Google cites in its Response illustrates how different venue is from retroactive application of substantive laws. In comparison to a simple change of venue, each of Google's cited cases unequivocally *did* involve primary conduct. *See I.N.S v. St. Cyr*, 533 U.S. 289, 315 (2001) ("The Court of Appeals, relying primarily on the analysis in our opinion in *Landgraf*[], held, contrary to the INS's arguments, that . . . the statute imposes an impermissible retroactive effect on aliens who, in reliance on the possibility of [a waiver of deportation] relief, pleaded guilty to aggravated felonies. We agree."); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (holding that the Secretary of Health and Human Services could not, under a newly passed statute, exercise rulemaking authority to promulgate Medicare cost limits that are retroactive, noting that "[t]he power to require

[1] In its response, Google also references that this MDL is one of two antitrust MDLs involving state attorneys general, the other being *In re Generic Pharmaceuticals Pricing Antitrust Litig.*, No. 16-md-2724 (E.D. Pa.) Response at 13 n.2. Whether the state attorneys general in *In re Generic Pharmaceuticals* decide to seek remand based on the Venue Act is beyond the purview of the State Plaintiffs' motion in this case.

readjustments for the past is drastic."); *Lindh v. Murphy*, 521 U.S. 320, 327 (1997) ("If [the new habeas law] were merely procedural in a strict sense (say, setting deadlines for filing and disposition), the natural expectation would be that it would apply to pending cases. But [the new law] does more, for in its revisions of prior law to change standards of proof and persuasion in a way favorable to a State, the statute goes beyond 'mere' procedure to affect substantive entitlement to relief.") (internal citations omitted). Because the Venue Act affects only secondary conduct—not deportation rights, *St. Cyr*, 533 U.S. at 315, prior transactions, *Bowen*, 488 U.S. at 208, or burdens of proof, *Lindh*, 521 U.S. at 327—it applies to pending cases under *Landgraf* absent clear congressional intent to the contrary.

II. None of Google's counterarguments are persuasive.

Unable to point to any past "primary conduct" affected by the Venue Act, Google makes three misplaced counterarguments.

a. The State Plaintiffs did not unduly delay in bringing this motion.

Google makes much of the fact that the States brought this motion two months after Congress passed the Venue Act. *See, e.g.*, Response at 1. In doing so, Google seems to imply that the States should have filed a motion the second the Act became law. But its critique confuses the reality of democratic governance: the States here are not 17 parties unified under one totalitarian decisionmaker—they are 17 sovereign states, each of which represents millions of citizens. This motion raised important questions, and those important questions required deliberation across these 17 sovereigns. Google's critique therefore runs headfirst into two realities: (1) deliberations had to take place across 17 sovereigns, and (2) plaintiffs have every right to pursue their case at every turn, including while those internal deliberations took place (and even while this motion is pending).

And candidly, those deliberations were complicated by the fact that the transferee judge, Judge Castel, has done a remarkable job moving this complicated MDL forward. Notwithstanding Judge Castel's stewardship over the State Plaintiffs' case, the State Plaintiffs desire to exercise their right to return to their original forum.

b. That the State Plaintiffs' case has already been transferred doesn't change that the Venue Act requires remand.

Google next emphasizes that the States' case has already been transferred, arguing that "[t]o the extent . . . the Venue Act can be interpreted as creating a procedural rule, the 'relevant activity' governed by that rule has already occurred." Response at 15. This misstates the law and the facts.

On the law, the best case, again, is *National City Lines*, 337 U.S. at 80-82. If Google's rule were right, the "relevant activity" for section 1404 would be when a motion for transfer were *initially* filed—but the Supreme Court ruled that transfer was *not* available at first, but *became* available after the enactment of section 1404. This case is exactly the same. Consolidation *was* available when this panel first centralized all cases in New York, but remand *became* available after the Venue Act was enacted. Recent precedent cited in the motion confirms this commonsense result. *See* Motion at 9 (citing *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach.* 523 U.S. 26 (1998)). In *Lexecon*, the Supreme Court interpreted the MDL statute to require the Panel to remand an action to the transferor court once the transferee court's authority over the case ended. 523 U.S. at 36-40. The Court held that § 1407(a) placed an affirmative obligation on the Panel to remand the action, even though (as here) the transferee court had not first issued a suggestion of remand. *Id.* at 36-37.

On the facts, it is not accurate that "the 'relevant activity' governed by" the Venue Act has fully concluded. To the contrary, the "relevant activity" at issue is "the entirety of the States' lawsuit." Congress wanted to strip the JPML, and transferee courts, of *all authority* over state antitrust lawsuits,

from the very start of the case to the very end of the case. For example, the MDL statute gives the transferee court authority to "conduct[] pretrial depositions[.]" 28 U.S.C. 1407(b). Yet pretrial depositions have yet to even begin in the States' case. It is logically inconsistent for Google to say that the Venue Act *would* have prevented the transfer of the States' case under the MDL statute, had the Venue Act been passed before that transfer, but that the same Act does not *now* prevent Judge Castel from overseeing depositions that have yet to even begin. Indeed, the text of the Venue Act is unequivocal: it does not say that "the *transfer portion* of the MDL statute shall not apply to any action"—it says that "[n]othing in th[e] [MDL statute] shall apply to any action[.]" *See* Consolidated Appropriations Act, *supra* at 2.

It would be one thing if the States' case had fully concluded, a judgment had been rendered, and *then* Congress passed the Venue Act. In that circumstance, the States could not move under the Venue Act to have their case reheard entirely—that would be analogous to asking that "'[a] new rule of evidence governing expert testimony'" apply after the "'testimony [had] already [been] taken.'" Response at 14 (quoting *Landgraf*, 511 U.S. at 291 (Scalia, J., concurring in the judgments)). But here, the lawsuit is in its infancy. Judgment is years away. The MDL statute should not continue to apply, at *any* point, to the States' lawsuit.

c. Google's efficiency arguments misunderstand Congress's purpose in passing the Venue Act.

Finally, Google argues that this Panel should decline to order remand as a matter of discretion. Its argument boils down to efficiency. It notes that "[t]he Panel centralized State Plaintiffs' action because it recognized the substantial overlap with private plaintiffs' actions," Response at 17, that the transferee court "established a structure for the efficient management of [multiple] cases," *id.* at 18, and that the transferee court "even planned the entire discovery process based off when

Google complied with" one of his orders, *id.* True or not, these arguments are beside the point. Congress was fully aware that MDLs have numerous benefits, but they passed the Venue Act regardless. Why? Because Congress knew that MDLs proceed slower than individual actions. Congress concluded that, despite the benefits that an MDL might provide, those benefits were outweighed by the delay states face in being consolidated with other parties. *See* Ex. 1 Letter from Senators Klobuchar, Buck, Lee, and Cicilline at 2 & 3 (noting that "prompt resolution of state enforcement actions is required to 'secur[e] relief' for state citizens '*as quickly as possible*.'") (emphasis added). Indeed, the Eastern District of Virginia recently agreed when it rejected Google's attempt to transfer a case brought against it by the Department of Justice. *See United States v. Google LLC*, 2023 WL 2486605, at *5 (Mar. 14, 2023, E.D. Va. 2023) (noting that, in passing the MDL statute, "Congress prioritized concerns about delay of government antitrust suits above the goals of efficiency and judicial economy" and that "[t]he recent expansion of the exclusion to antitrust actions brought by states further supports the conclusion that Congress's intent was to prioritize efficient and expeditious adjudication of government antitrust enforcement actions and minimize delay.").

Here, it makes sense for the Panel to remand. Doing so fulfills Congress's intent in passing the Venue Act. It also prevents the potential for parallel state lawsuits, if some states choose to file a new lawsuit in the Eastern District of Texas, while other states remain in the Southern District of New York. The cleanest route is the same route that Congress intended: remand, so that the States can bring their lawsuit in the forum they originally selected.

CONCLUSION

Under the Venue Act, the States' case is no longer subject to centralized pretrial proceedings in the Southern District of New York. The States respectfully request that the Panel remand their lawsuit to the Eastern District of Texas.

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Exhibit 1

Congress of the United States
Washington, DC 20515

July 28, 2021

The Honorable Roslynn R. Mauskopf
Director
Administrative Office of the United States Courts
Washington, D.C. 20544

Dear Judge Mauskopf:

We write in response to your July 19, 2021 letter expressing concerns about H.R. 3460, the "State Antitrust Enforcement Venue Act of 2021," which was reported out of the House Committee on the Judiciary on June 24, 2021. We would like to take this opportunity to explain the importance of this legislation and its Senate companion, S. 1787, as well as to address the concerns raised in your letter.

Our country faces substantial problems with monopolization. Many industries are highly consolidated, and we need vigorous antitrust enforcement to protect consumers, workers, and competition. Congress and the federal government rely on state attorneys general to address this crisis by aiding in the enforcement of our federal antitrust laws. These bills would make a real difference, permitting state attorneys general to address anticompetitive conduct unencumbered by the need to coordinate—and possibly consolidate—with slower-moving private actions.

Congress is vested with the authority to define the power of the Courts to hear certain cases and determine where those cases should be heard. While the Constitution sets the outer limits of the federal Judiciary's jurisdiction, it is Congress that decides its exact metes and bounds,[1] including where and whether venue is proper.[2]

The *State Antitrust Enforcement Venue Act* reaffirms the importance of state antitrust enforcement. State attorneys general have critical opportunities to protect consumers from the problems that result from monopolies and oligopolies. The Judicial Panel on Multidistrict Litigation's ("JPML") powers should not be used to hinder the efforts of state attorneys general

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[1] *Cary v. Curtis*, 44 U.S. 236, 245 (1845) ("[T]he judicial power of the United States, although it has its origin in the Constitution, is . . . dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress . . . ."); *Turner v. Bank of N. Am.*, 4 U.S. 8 (1799) (Crase, J.) ("The notion has frequently been entertained, that the federal courts derive their judicial power immediately from the constitution; but the political truth is that the disposal of the judicial power (except in a few specified instances) belongs to congress. If congress has given the power to this court, we possess it, not otherwise.").

[2] *Atl. Marine. Constr. Co., Inc. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 56 (2013) ("The structure of the federal venue provisions confirms that they alone define whether venue exists in a given forum."); *Byers v. C.I.R.*, 740 F.3d 668, 676 (D.C. Cir. 2014) ("Congress determines the jurisdiction and venue of this court and we have no authority to declare otherwise.").

to enforce the antitrust statutes passed to protect American consumers. From the inception of the JPML, Congress has been aware of the potential for "substantial[] delay[]" that centralization for multidistrict litigation could entail.[3] That is why, at the behest of the Department of Justice, Congress included Section 1407(g), prohibiting the transfer of actions brought by the United States "under the antitrust laws" for "coordinated or consolidated pretrial proceedings" with similar private actions.[4] Congress did so mindful that keeping federal antitrust actions separate from multidistrict proceedings might "occasionally burden defendants" by requiring them "to answer similar questions posed both by the Government and by private parties."[5] But permitting federal antitrust actions to remain independent was "justified by the importance to the public of securing relief in antitrust cases as quickly as possible."[6]

The purpose of exempting federal antitrust enforcement actions from inclusion in multidistrict litigation applies equally to state actions. Like federal antitrust enforcers, state enforcement actions serve interests beyond those served by private actions.[7] H.R. 3460 and S. 1787 aim to give federal and state enforcers relative parity—neither federal nor state governments should be hamstrung in their efforts to halt antitrust violations or protect their citizens from anticompetitive conduct.

Your letter suggests that Congress created the JPML to be a "permanent solution" to the "problem" of too much antitrust enforcement.[8] We disagree. There is no over-enforcement problem. In fact, the statute permitting states to bring *parens patriae* actions for damages was passed as a response to *under*-enforcement of the antitrust laws.[9] In passing the *Hart-Scott-Rodino Act*, Congress noted that antitrust violations often injure "millions of consumers, each in relatively small amounts,"[10] and as a result, the "antitrust violations which ha[d] the broadest and, often, the most direct impact on consumers" were "likely to escape the penalty of the loss of illegally-obtained profits."[11] Congress specifically recognized the role of state attorneys general in protecting consumers against antitrust violations and noted that it had "fill[ed] this gap by providing the consumer an advocate in the enforcement process—his [or her] State attorney general."[12]

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[3] H.R. Rep. No. 90-1130, at 7 (1968) (letter from then-Deputy Attorney General Ramsey Clark).
[4] There is, of course, a narrow exception to this prohibition for actions brought by the United States in its proprietary capacity. 28 U.S.C. § 1407(g).
[5] *Id.* at 8.
[6] *Id.*
[7] *See, e.g. Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 450–51 (1945) (explaining that antitrust violations are "matters of grave public concern" in which States have "an interest apart from that of particular individuals who may be affected").
[8] Letter of July 19, 2021, from Director Mauskopf ("AOUSC Letter"), pg. 1.
[9] *See* Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, § 301, 90 Stat. 1383 (amending the Clayton Act to permit "[a]ny attorney general of a State [to] bring a civil action" under the antitrust laws "in the name of such State . . . to secure monetary relief" for its citizens").
[10] H.R. Rep. No. 94-499 at 4 (1975). Those "injuries [are] too small to" justify "bear[ing] the burden of complex litigation." *Id.* at 4.
[11] *Id.*
[12] *Id.*

Your letter further suggests that the Act "could adversely affect the interests of the States."[13] However, 52 state and territory attorneys general recently called on Congress to enact this law and put states "on equal footing with federal enforcers in deciding where, when, and how to prosecute cases."[14]

Your letter also raises concerns about the potential inconvenience faced by defendants under the legislation. While we understand these considerations, we are more concerned about the prejudice caused to state citizens when redress for their injuries is unduly delayed. As noted, Congress recognizes that requiring defendants to potentially "answer similar questions posed both by the Government and by private parties" may "occasionally burden" them. [15] But that burden is justified when, as now, prompt resolution of state enforcement actions is required to "secur[e] relief" for state citizens "as quickly as possible."[16]

Finally, we note that some of the arguments made in your letter closely mirror the arguments made by Google in its response to the antitrust complaints of Texas and other states.[17] In fact, your letter quotes almost verbatim from Google's response brief without appropriate citation and largely adopts Google's positions in the Texas case in that both express a primary concern with the potential conflicting rulings on substantive issues, such as market definition; [18] make the same argument that Congress only amended Section 1407 once and that state attorneys general antitrust actions have always been subject to consolidation;[19] state the purposes of centralization in similar terms;[20] express concern about "multiple representation" and address use of outside counsel; [21] and argue that centralization is necessary to coordinate the apportionment of damages.[22]

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[13] AOUSC Letter at pg. 4.
[14] Letter of June 18, 2021, from the National Association of Attorneys General in support of the State Antitrust Enforcement Venue Act of 2021; H.R. 3460, S. 1787.
[15] H.R. Rep. No. 90-1130 at 8.
[16] *Id.*
[17] For example, in its response, Google argued: "To the extent that some cases require specialized proceedings (such as class certification), the transferee court can craft a protocol that '1) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues; and 2) ensures that pretrial proceedings will be conducted in a streamlined manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties.' *In re: Countrywide Fin. Corp. Mortg. Mktg. & Sales Practices Litig.*, 582 F. Supp. 2d at 1375 (internal citation omitted); see also *In re Generic Pharm. Pricing Antitrust Litig.*, MDL Docket No. 2724 at *2 ('To the extent the State Action presents unique factual and legal issues, the transferee judge has the discretion to address those issues through the use of appropriate pretrial devices.'). Google Mem. Supp. Mot. To Transfer ("Google Mem.") at 15-16, *In re Digital Advertising Antitrust Litig.*, MDL No. 3010, ECF No. 1-1 (U.S. J.P.M.L.). Compare with your letter: "To the extent there are actions with different legal issues or concerns, the MDL judge can formulate a pretrial program that allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues (for example, by creating a separate discovery or motion track for certain actions). This ensures that pretrial proceedings will be conducted in a streamlined manner leading to a just and expeditious resolution of all actions to the overall benefit of the parties." AOUSC Letter pg. 3.
[18] AOUSC Letter pg. 3; Google Mem. at 13, Google Reply Supp. Mot. To Transfer ("Google Reply") at 7, *In re Digital Advertising Antitrust Litig.*, MDL No. 3010, ECF No. 89 (U.S. J.P.M.L.).
[19] AOUSC letter pg. 2; Google Reply at 16.
[20] AOUSC letter pgs. 2-3; Google Mem. at 9.
[21] AOUSC letter pg. 4; Google Mem. at 14, 18.
[22] AOUSC letter pg. 4; Google Reply at 12-13.

It strikes us as unusual, if not inappropriate, for the Administrative Office of the United States Courts to adopt the arguments of a party in active litigation before the federal courts in a policy letter to Congress. But whether the arguments in your letter came from Google's court filings or somewhere else, we remain skeptical that those arguments represent the correct public policy balance regarding the rights of state attorneys general in the federal courts and before the JPML.

We thank you for your attention and interest in this matter.

Sincerely,

Amy Klobuchar
Chairwoman
Senate Judiciary Subcommittee on
Competition Policy, Antitrust &
Consumer Rights

Mike Lee
Ranking Member
Senate Judiciary Subcommittee on
Competition Policy, Antitrust &
Consumer Rights

Ken Buck
Ranking Member
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Antitrust, Commercial &
Administrative Law

David N. Cicilline
Chair
House Judiciary Subcommittee on
Antitrust, Commercial &
Administrative Law

cc: United States Judicial Panel on Multidistrict Litigation
Honorable Steny Hoyer
Honorable Kevin McCarthy
Honorable Jerrold Nadler
Honorable Richard Durbin

BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: GOOGLE DIGITIAL ADVERTISING ANTITRUST LITIGATION	MDL No. 3010 ORAL ARGUMENT REQUESTED

This Document Relates To:

STATE OF TEXAS, et. al., *Plaintiffs,* -against- GOOGLE LLC, *Defendant.*	No. 1:21-cv-06841 (PKC) (S.D.N.Y.) No. 4:20-cv-957 (SDJ) (E.D. Tex.)

PROOF OF SERVICE

In compliance with Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, I hereby certify that copies of the foregoing Reply in Further Support of the State Plaintiffs' Motion for Remand to the Eastern District of Texas were filed electronically with the Clerk of the JPML via ECF on March 29, 2023 and were served via ECF to all Counsel of Record and/or in the manner indicated below:

Clerk of the Courts (via U.S. Mail)

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Attn: Clerk of the Court
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New York, New York, 10007

United States Courthouse
Sherman Division
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Plano, Texas 75024

Dated: March 29, 2023

Respectfully submitted,

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And on behalf of all Plaintiff States